Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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DELETE, DELETE, DELETE	)	GN Docket No. 25-133
	)	

To: The Commission

COMMENTS OF NATIONAL TAXPAYERS UNION FOUNDATION

April 11, 2025

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Introduction[1]

On behalf of National Taxpayers Union Foundation (NTUF), I submit these comments in response to the Federal Communications Commission's (FCC) "DELETE, DELETE, DELETE" notice of inquiry. Based in Washington, DC, National Taxpayers Union is the oldest taxpayer advocacy organization in the United States.[2] Its affiliated think-tank, NTUF, conducts evidence-based policy research on economic and technology policy issues of interest to taxpayers, including U.S. and international approaches to artificial intelligence, emerging technologies, and data protection.

NTUF welcomes the FCC's recognition that creating a more favorable regulatory environment for technological innovation can enhance economic growth and global competitiveness. As the FCC begins its review of existing programs and regulations, we would like to emphasize the importance of a well-calibrated, balanced, and proportional approach. First, the FCC should prioritize eliminating duplicative programs and reducing waste and fraud to ensure the efficient allocation of taxpayer resources. Second, the FCC must seek to identify outdated and overly burdensome rules where the regulatory costs clearly outweigh any potential benefits. In such cases, the regulations in question must be eliminated or amended. However, the Commission must also exercise caution in not eliminating well-designed, balanced programs and regulations where benefits clearly exceed any associated regulatory costs.

We believe that by adopting an evidence-based, cautious, and innovation-friendly approach, the Commission can play an important role in updating the U.S. regulatory approach to telecommunications policy and eliminating outdated and unnecessary programs and regulations where appropriate. With this balanced, proportionate approach in mind, this submission focuses on the Universal Service Fund—by far the most expensive FCC-administered broadband initiative—and evaluates whether different USF programs should be continued, restructured, or phased out in light of recent federal investments and the growing reality that affordability—rather than availability—is increasingly the primary barrier to Internet access.[3]

Moreover, as several sections in this submission highlight, greater interagency coordination may be needed to prevent overlap and duplicative spending across a growing patchwork of federal and state-level broadband deployment programs. In such cases, the FCC should consider establishing mechanisms to improve coordination and, where necessary, seek statutory authorization or clarification from Congress.

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[1] This comment builds upon the regulatory comments previously submitted by the author to the Federal Communications Commission on behalf of the Competitive Enterprise Institute in March 2022. See Ryan Nabil, *Comments to the Federal Communications Commission in the Matter of the Report on the Future of the Universal Service Fund*, submitted by the Competitive Enterprise Institute, WC Docket No. 21-476 (Mar. 17, 2022), https://cei.org/wp-content/uploads/2022/03/Ryan_Nabil_CEI_Comments_FCC_21-476.pdf.

[2] Federal Communications Commission, Public Notice: IN RE: DELETE, DELETE, DELETE, GN Docket No. 25-133, DA 25-219 (rel. Mar. 12, 2025), https://docs.fcc.gov/public/attachments/DA-25-219A1.pdf.

[3] Pew Charitable Trusts, "Every State Identifies Broadband Affordability as Primary Barrier to Closing Digital Divide," October 4, 2024, https://www.pewtrusts.org/en/research-and-analysis/articles/2024/10/04/every-state-identifies-broadband-affordability-as-primary-barrier-to-closing-digital-divide; Augusto Espín and Christian Rojas, "Bridging the digital divide in the US," *International Journal of Industrial Organization* 93 (March 2024): 103053, https://doi.org/10.1016/j.ijindorg.2024.103053.

I. Universal Service Fund

Recommendation: *Evaluate the effectiveness of Universal Service Fund components to prevent taxpayer waste and ensure effective use of taxpayer resources to enhance broadband connectivity.*

The Universal Service Fund, originally established to ensure telecommunications access for rural and underserved areas, requires urgent reform to address affordability and efficiency challenges, with a view to phasing out duplicative and unnecessary components. Currently, the USF program costs over $8 billion a year, most of which comes from the High-Cost and E-Rate programs.[4] In 2017, a working paper by Paul de Sa, then the chief of the FCC Office of Strategic Planning and Analysis, estimated that it would cost $40 billion to achieve 98 percent broadband coverage at 25/3 Mbps speeds.[5] However, between 2017 and 2022, the Commission's USF disbursements exceeded $43 billion, according to an analysis of FCC data by the Information Technology & Innovation Foundation (ITIF).[6]

Recent federal investments have further compounded this level of spending. The 2021 American Rescue Plan (ARP) allocated $350 billion to U.S. state and local governments for infrastructure financing, including broadband deployment.[7] In addition, the 2021 Infrastructure Investment and Jobs Act (IIJA) allocated $65 billion to support broadband access: $42.5 billion for the Broadband Equity, Access, and Deployment (BEAD) program to improve connectivity in rural and underserved areas, and $14.2 billion for the Affordable Connectivity Program (ACP) to assist low-income households in affording internet access.[8]

Given this significant expansion of federal funding and the proliferation of overlapping programs, caution is warranted regarding the FCC's future approach to the USF.[9]

First, in the short run, the Commission must ensure that existing multi-year USF commitments are spent effectively. To that end, the Commission would particularly benefit from a focused effort to eliminate fraud, waste, and duplicative spending across other federal and state broadband projects.

Second, in the medium to long term, the FCC should evaluate whether—and to what extent — different USF programs are still necessary to promote broadband connectivity. In this context, particular attention must be paid to whether other existing federal and state initiatives suffice to meet the specific functions and objectives of individual USF programs.[10] Answering this question

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[4] U.S. Government Accountability Office (GAO), *Telecommunications: Administration of Universal Service Programs Is Consistent with Selected FCC Requirements*, GAO-24-106967 (Washington, D.C.: U.S. Government Accountability Office, July 2024), Highlights, https://www.gao.gov/assets/gao-24-106967.pdf.

[5] Paul de Sa, "Improving the Nation's Digital Infrastructure" (working paper, Office of Strategic Planning & Policy Analysis, Federal Communications Commission, January 17, 2017), 2, https://docs.fcc.gov/public/attachments/DOC-343135A1.pdf.

[6] Joe Kane and Jessica Dine, *Comments to the Federal Communications Commission on the Future of the Universal Service Fund*, submitted by the Information Technology and Innovation Foundation, WC Docket No. 21-476 (Feb. 17, 2022), 2, https://itif.org/publications/2022/02/17/comments-fcc-future-universal-service-fund/; Federal Communications Commission (FCC), "Contribution Factor & Quarterly Filings - Universal Service Fund (USF) Management Support," 2021, https://www.fcc.gov/general/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support.

[7] American Rescue Plan Act of 2021, Pub. L. No. 117-2, §§ 602–603.

[8] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, §§ 60102, 60502, 135 Stat. 429 (2021).

[9] GAO, *Broadband: A National Strategy Needed to Coordinate Fragmented, Overlapping Federal Programs*, GAO-23-106818 (May 10, 2023), 1, https://www.gao.gov/products/gao-23-106818.

[10] Other technology policy researchers and scholars have also made similar arguments. See, e.g., Jeffrey Westling, *Comments to the Federal Communications Commission on the Report on the Future of the Universal Service Fund*, submitted by the

will ultimately require a review of each USF component in relation to similar broadband initiatives, a rigorous evaluation of program efficiency and outcomes, and a clear justification for continuing, modifying, or phasing out each component. While improved versions of some USF components—particularly the E-Rate and Lifeline Programs—will still be necessary, a more coordinated and evidence-based approach is needed to avoid unnecessary duplication with broader national broadband initiatives and to prevent waste of limited resources.

II. The High-Cost Program

Recommendation: *Considering significant increases in recent funding, consider scaling down the program in favor of targeted approaches to areas with limited broadband connectivity.*

With an annual budget of over $4 billion, the high-cost program represents the largest of the four components of the Universal Service Fund, accounting for over half of annual outlays between 2021 and 2022 (Table 1).[11] The program, also known as the Connect America Fund, offers subsidies to internet service providers for connectivity in "high-cost areas," which tend to be rural, sparsely populated parts of the country.[12] Since much of the high-cost program disbursements are tied to ongoing commitments, they cannot be changed significantly in the short term.[13] However, significant increases in funding through the American Rescue Plan and Infrastructure Investment and Jobs Act have significantly expanded the availability of funds and alternative programs for rural connectivity. Furthermore, as broadband connectivity has improved throughout the country, affordability—rather than the lack of connectivity—is becoming significantly more important in ensuring internet access.[14] As a result, the extent to which the high-cost program—which provides subsidies to ISPs instead of to consumers directly—remains unclear. Due to such factors, the extent to which the program is needed in the future remains unclear.

Table 1. Universal Service Fund Disbursements by Program, 2021–2023

USF Program	2023	2022	2021
E-Rate	$2.46 billion (30.3%)	$2.08 billion (28.0%)	$2.16 billion (25.2%)
High Cost	$4.32 billion (53.2%)	$4.25 billion (57.1%)	$5.12 billion (59.8%)
Lifeline	$0.87 billion (10.7%)	$0.61 billion (8.2%)	$0.72 billion (8.5%)
Rural Health Care	$0.47 billion (5.8%)	$0.50 billion (6.7%)	$0.56 billion (6.5%)
Total	**$8.12 billion (100.0%)**	**$7.44 billion (100.0%)**	**$8.55 billion (100.0%)**

American Action Forum, WC Docket No. 21-476 (Feb. 17, 2022), 5, https://www.americanactionforum.org/comments-for-record/comments-on-the-report-on-the-future-of-the-universal-service-fund/.

[11] Universal Service Administrative Company (USAC), 2023 Annual Report (Washington, DC: USAC, 2023), https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2023/2023_USAC_Annual_Report.pdf.

[12] Jeffrey Westling, "Lowering the Cost of Universal Service Fund," American Action Forum, December 5, 2024, accessed April 11, 2025, https://www.americanactionforum.org/insight/lowering-the-cost-of-the-universal-service-fund/

[13] Westling, "Lowering the Cost of USF."

[14] Ryan Nabil, "How to Expand Broadband Access without Spending $100 Billion," *Real Clear Policy*, April 13, 2021, https://www.realclearpolicy.com/articles/2021/04/13/how_to_expand_broadband_access_without_spending_100_billion_772426.html.

Source: Author's calculation based on data from USAC (2023) and Westling (2024)[15]

In the medium term, the Commission must evaluate whether the high-cost program should be continued in its present form. Even if the program is not discontinued altogether, it should, at a minimum, be scaled down significantly. To that end, the FCC should improve its mapping capabilities to ensure that USF taxpayer dollars are not wasted in areas that already enjoy strong broadband connectivity.[16] Instead, through better mapping information, the FCC should make evidence-based decisions to allocate scarce resources to areas that lack adequate connectivity (for example, certain tribal areas without adequate connectivity, as my former colleague Will Yepez noted).[17] To ensure fiscal transparency, the Commission should provide a detailed timeline of when and how it will use the existing broadband funding to achieve universal Internet access throughout the country.

To ensure that reforms are both targeted and fiscally responsible, the Commission should consider the following specific recommendations:

1. **Establish a public timeline for evaluating, restructuring, and potentially sunsetting aspects of the program**. The Commission should publish and commit to a clear, multi-stage timeline that outlines how and when it will evaluate the long-term feasibility of the high-cost program. The FCC should also clarify under what conditions parts of the program might be continued, scaled down, or retired.

2. **Strengthen regulatory oversight and accountability mechanisms for ongoing multi-year disbursements**. For existing multi-year obligations, the Commission should consider improving oversight by requiring regular reporting, auditing broadband deployment outcomes, and enforcing compliance with established benchmarks.

3. **Limit future subsidies to unserved and underserved areas using updated broadband maps and clear eligibility standards**. The FCC should refuse to disburse any new funding for areas that have sufficient broadband access or for which existing federal or state plans are underway. Future funding should only be granted on the basis of granular, up-to-date mapping data and clearly established benchmarks.

4. **Implement a cost-effectiveness threshold, requiring special justification for unusually high per-location subsidies**. The Commission should adopt benchmarks for cost-effectiveness thresholds (e.g., $300 per location per month or $5,000 per location over the life of a project).[18] Such thresholds should be set in alignment with guidelines used by other national programs, such as NTIA's BEAD, and in line with the Commission's past modeling

[15] USAC, *2023 Annual Report*, 17; Westling, "Lowering the Cost of USF."
[16] Will Yepez, *The Universal Service Fund Is on the Brink, but It's Not Too Late to Save It* (Washington, DC: National Taxpayers Union, April 15, 2021), 3, https://www.ntu.org/publications/detail/the-universal-service-fund-is-on-the-brink-but-its-not-too-late-to-save-it.
[17] Yepez, 3.
[18] Federal Communications Commission, *Wireline Competition Bureau Authorizes Enhanced A-CAM Support for Eligible Carriers and Establishes Limited Challenge Process*, DA 23-778 (rel. August 25, 2023), https://docs.fcc.gov/public/attachments/DA-23-778A1.pdf.

for the high-cost program.[19] Funding requests that exceed this threshold—which represent projects that receive disproportionately high subsidies relative to benefits—should be subject to heightened review and require clear justifications for continued funding on the basis of geographic circumstances, difficulties with building infrastructure, tribal needs, etc. Subjecting future subsidies to clearly established, evidence-based benchmarks can ensure that taxpayer resources are directed towards areas where public investment yields the highest impact—barring areas where unique circumstances warrant higher infrastructure costs.

5. **Reallocate resources from infrastructure subsidies for ISPs to affordability initiatives for consumers where appropriate.** Recent FCC broadband deployment data shows that fixed internet coverage (with a minimum speed of 25/3 Mbps) has expanded significantly across much of the country—with specific tribal and rural areas being the exception.[20] However, Internet adoption remains low in some places where the infrastructure exists, suggesting that cost—rather than availability—is now a primary obstacle for many households.[21] Indeed, according to survey data from the Pew Research Center, affordability now represents the "primary barrier to closing the digital divide" across all U.S. states.[22] Similarly, Augusto Espín and Christian Rojas of the University of Massachusetts Amherst found that "affordability policies (i.e., subsidies) can have a larger impact on decreasing the [connectivity] gap vis-à-vis infrastructure deployment (i.e., increased coverage or greater bandwidth."[23]

   This trend suggests the growing relevance of consumer-focused programs, such as the Affordable Connectivity Program, which offers monthly discounts to eligible households to help offset the costs of internet service.[24] As affordability increasingly represents the leading barrier to digital connectivity, the Commission should consider shifting a greater portion of its funding away from provider-oriented subsidies to programs that address cost-related access challenges more directly. Such an approach can help ensure that limited taxpayer resources are aligned with current connectivity barriers and are more efficiently used to expand access to the Internet for all Americans.

6. **Establish mechanisms for interagency coordination with NTIA, USDA, state agencies, and other relevant stakeholders**. The federal government now oversees a broad range of broadband-related programs across multiple agencies, a structure that has grown significantly following major funding expansions under the Infrastructure Investment and Jobs Act (IIJA) and the American Rescue Plan Act (ARPA) (see Table 2).[25] The FCC

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[19] National Telecommunications and Information Administration (NTIA), Notice of Funding Opportunity for the Broadband Equity, Access, and Deployment (BEAD) Program, NTIA-2022-0002 (May 13, 2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf; Federal Communications Commission, *In the Matter of Connect America Fund*, FCC 18-29 (rel. Mar. 23, 2018), https://docs.fcc.gov/public/attachments/FCC-18-29A1.pdf.

[20] FCC, *Internet Access Services: Status as of December 31, 2023*, DOC-405488A1 (rel. June 2024), https://docs.fcc.gov/public/attachments/DOC-405488A1.pdf.

[21] NTIA, *Local Estimates of Internet Adoption (Project LEIA) Interactive Map*, accessed April 10, 2025, https://www.ntia.gov/other-publication/2024/local-estimates-internet-adoption-project-leia-interactive-map.

[22] Pew Charitable Trusts, "Every State Identifies Broadband Affordability as Primary Barrier to Closing Digital Divide."

[23] Espín and Rojas, "Bridging the digital divide in the US."

[24] FCC, "Affordable Connectivity Program," accessed April 11, 2025, https://www.fcc.gov/acp.

[25] GAO, *Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide*, GAO-22-104611 (Washington, DC: GAO, May 2021), 1, 13, 27–29, https://www.gao.gov/products/gao-22-104611

continues to manage the Universal Service Fund, including the High-Cost Program and Affordable Connectivity Program. At the same time, the National Telecommunications and Information Administration (NTIA) administers the BEAD Program and the Digital Equity Act,[26] while the U.S. Department of Agriculture (USDA) supports rural broadband through the ReConnect Program.[27] States are also heavily involved in deploying broadband infrastructure and overseeing BEAD implementation at the local level (Table 2).

Despite their shared goals, these agencies and state entities tend to have significant areas of regulatory overlapping, duplication, and fragmentation.[28] In the presence of greater interagency coordination, such overlaps could lead to a positive reinforcement mechanism. However, in the absence of structured coordination among similarly situated programs—as is increasingly the case in the United States—there is a growing risk of overlapping deployments, inconsistent funding standards, and excessive regulatory burden on recipients.[29] For example, service providers and local governments often must navigate different definitions of "unserved" and "underserved," divergent eligibility rules, and duplicative application processes.[30] The 2022 report by the Government Accountability Office (GAO) also found that over 100 broadband-related programs were divided across 15 federal agencies, and recommended that the federal government take steps to improve interagency coordination and reduce regulatory fragmentation.[31] Although agencies such as the FCC, NTIA, the Treasury, and USDA have previously signed memoranda of understanding, these arrangements have largely been informal, limited in scope, and temporary.[32]

To improve regulatory coordination, the Commission should consider advocating for the creation of a formal interagency broadband coordination council, composed of representatives from the leading administrators and stakeholders involved in U.S. broadband deployment (Table 2).[33] It should include, at a minimum, the FCC, NTIA, USDA, Treasury, state broadband offices, and possibly GAO and the OMB (Table 2). This body could serve as a central platform for: i) sharing deployment data and funding information, ii) aligning eligibility definitions and performance standards, and iii) coordinating long-term broadband

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[26] NTIA, "BEAD Program Overview," BroadbandUSA, accessed April 11, 2025, https://broadbandusa.ntia.doc.gov.
[27] U.S. Department of Agriculture, "ReConnect Loan and Grant Program," accessed April 11, 2025, https://www.usda.gov/reconnect.
[28] According to the GAO, *fragmentation* refers to situations where "more than the federal agency (or more than one organization within an agency) is involved in the same broad area of national need and opportunities exist to improve service delivery." In contrast, *overlap* refers to circumstances where "multiple agencies have similar goals, engage in similar strategies to achieve them, or target similar beneficiaries." Finally, *duplication* refers to situations "where two or more agencies or programs are engaged in the same activities or provide the same services to the same beneficiaries." GAO, *Broadband National Strategy*, GAO-22-104611, 2, 13, 27–29.
[29] See the note above.
[30] See, e.g., NTIA, *BEAD Challenge Process Policy Notice, Version 1.3* (Washington, DC: NTIA, February 2024), 1–2, https://broadbandusa.ntia.doc.gov/sites/default/files/2024-02/BEAD_Challenge_Process_Policy_Notice_v1.3.pdf.
[31] GAO, *Broadband National Strategy*, GAO-22-104611, 1, 13, 27–29.
[32] NTIA, *Memorandum of Understanding Among the U.S. Department of Agriculture, U.S. Department of Commerce, U.S. Department of the Treasury, and the Federal Communications Commission to Facilitate Broadband Interagency Coordination* (July 2024), https://www.ntia.gov/sites/default/files/2024-07/broadband-interagency-coordination-mou-2024-renewal.pdf.
[33] While GAO does not explicitly recommend the creation of an interagency body, it does recommend that the Executive Office of the President develop a national strategy that addresses the fragmentation and lack of coordination among more than a dozen federal agencies administering over a hundred broadband programs. See GAO, *Broadband National Strategy*, GAO-22-104611, 30–31. https://www.gao.gov/products/gao-22-104611.

investment planning. The development of uniform definitions (e.g., of terms such as "unserved" and "underserved") and cost-effectiveness benchmarks could substantially reduce inefficiencies and lower the administrative burden for recipients.[34] Additionally, the development of joint broadband funding, built on shared geospatial data and regularly updated by all participants, including state agencies, would enhance transparency, reduce the risk of duplicative spending, and help prevent fraud in infrastructure spending.[35]

Table 2. Agencies and Bodies in Charge of U.S. Broadband Deployment

Actor	Role
Federal Communications Commission	i) Oversees the Universal Service Fund (USF), which includes key programs like the High-Cost Program, E-Rate, Lifeline, and oversight of the Affordable Connectivity Program (ACP); ii) Establishes regulations for broadband subsidy distribution and ensures compliance by recipients.
National Telecommunications and Information Administration	i) Leads federally funded broadband expansion efforts under the Infrastructure Investment and Jobs Act (IIJA), including the BEAD Program, Digital Equity Act, and Tribal Broadband Connectivity Program; ii) Coordinates national broadband mapping and supports interagency collaboration.
US Department of Agriculture	i) Administers the ReConnect Program, which provides financial support for broadband infrastructure in rural areas with limited market-driven investment.
State Agencies	i) Designs and implements state-level broadband initiatives, including BEAD planning, management of grant programs, and collaboration with federal and local entities.
U.S. Department of the Treasury	i) Allocates federal broadband funding through programs like the Capital Projects Fund (CPF) and State and Local Fiscal Recovery Funds (SLFRF), both created under the American Rescue Plan Act (ARPA).
Tribal Governments	i) Administers broadband deployment projects on Tribal lands, often receiving direct federal grants; ii) Works with federal partners to expand infrastructure and improve digital access in historically underserved areas.
Local Governments	i) Manages community-led broadband networks and local infrastructure investments, frequently using ARPA allocations; ii) Collaborates with nonprofit organizations and regional entities to close connectivity gaps.
U.S. Government Accountability Office*	i) Serves as a nonpartisan oversight body, auditing broadband initiatives across agencies; ii) Highlights program inefficiencies and makes recommendations to improve coordination, transparency, and outcomes.
Office of Management and Budget*	i) Plays a cross-cutting role in interagency budget planning and performance evaluation; ii) Supports the standardization of broadband program metrics, data collection, and reporting frameworks across the federal government.

* Not directly in charge of administering broadband-related programs

Source: Author, based on GAO, *Broadband: National Strategy*, GAO-23-105865; FCC; NTIA; USDA; Treasury; OMB documentation and program websites.

[34] NTIA has previously drawn attention to some of these issues. NTIA, *BEAD Challenge Process Policy Notice*, 1–2.
[35] For an example of a more limited framework that seeks to promote interagency coordination, see NTIA, *Interagency Coordination MOU* (July 2024).

III. The E-Rate Program

Recommendation: *Continue the E-Rate Program but i) introduce means-testing for funding levels and eligibility, ii) create an accessible, anonymized database for institutions to compare contract terms and pricing, and iii) strengthen regulatory coordination mechanisms to reduce duplicative spending*

The E-Rate program—a relatively less known component—offers financial assistance to elementary and secondary schools and libraries for broadband connectivity.[36] Although this program has accounted for between 25.2% and 30.3% of total USF disbursements between 2021 and 2023, the program is particularly important to ensure internet connectivity for many educational institutions across the country (Table 1).[37] Depending on the poverty level of the county in which an educational establishment is located, the program accounts for between 20% and 90% of the total costs of Internet connectivity for eligible institutions.[38] Numerous school districts across the country lack a large enough tax base to draw on, which is why the E-Rate program needs to be continued in some form.[39] For many such institutions, affordability—rather than the availability of the Internet—now represents a more significant barrier to digital connectivity.[40]

These differences warrant a different regulatory approach to the E-Rate Program than for the high-cost program. In the case of the high-cost program, the significant influx in funds and recent advances in broadband connectivity means that the FCC should scale back the program significantly—and pursue a narrow, targeted focus on parts of the country (e.g., certain tribal and remote areas) that still lack sufficient coverage.[41] In contrast, the priority for the E-Rate program should be to identify duplicative programs, reduce fraud and misuse of funds, and identify ways to reduce spending and improve efficiency.[42]

To that end, the FCC could consider several steps:

1. **Introduce more rigorous means-testing to ensure that E-rate funds are targeted more effectively to educational institutions most in need.** Currently, E-Rate funds are not subject to strict means testing, with some schools in affluent areas possibly receiving government support despite possessing the means to afford broadband connectivity independently.[43] However, even within the same state, significant disparities exist between affluent and economically disadvantaged school districts. Stricter means-testing for determining eligibility and funding levels would allow the FCC to prioritize

[36] U.S. Department of Education, "E-Rate: Universal Service Program for Schools and Libraries," updated February 27, 2024, accessed April 10, 2025, https://www2.ed.gov/about/inits/ed/non-public-education/other-federal-programs/fcc.html.
[37] Author's calculations based on data from USAC, *2023 Annual Report*, 17 and Westling, "Lowering the Cost of USF."
[38] Angele A. Gilroy, *Universal Service Fund: Background and Options for Reform*, Congressional Research Service Report RL33979 (Washington, DC: Library of Congress, October 25, 2011), 3, https://www.congress.gov/crs-product/RL33979.
[39] FCC, "E-Rate: Universal Service Program for Schools and Libraries," last updated February 27, 2024, accessed April 11, 2025, https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate.
[40] FCC, "E-Rate Program."
[41] Daniela Mejía, "Broadband Access in Tribal Areas Lags Rest of the Nation," *America Counts: Stories*, U.S. Census Bureau, June 18, 2024, https://www.census.gov/library/stories/2024/06/broadband-access-tribal-areas.html.
[42] GAO, *FCC Should Take Action to Better Manage Persistent Fraud Risks in the E-rate Program*, GAO-20-606 (Washington, DC: GAO, September 16, 2020), https://www.gao.gov/products/gao-20-606; FCC, "Summary of the Second E-Rate Modernization Order," accessed April 11, 2025, https://www.fcc.gov/general/summary-second-e-rate-modernization-order.
[43] Daniel Lyons, "Reconsidering the E-Rate Program," American Enterprise Institute, July 31, 2023, https://www.aei.org/technology-and-innovation/reconsidering-the-e-rate-program/

funding for libraries and schools in low-income areas that genuinely need public support.[44] It would also enable the FCC to calibrate E-rate funds depending on the level of support an institution needs based on its economic conditions—enabling the FCC to distribute limited taxpayer resources to institutions in greatest need more efficiently.

2. **Facilitate broadband pricing transparency and information-sharing mechanisms to lower broadband costs**. Increased transparency can be one of the most effective tools for reducing the costs of the E-Rate program.[45] Many educational institutions operate in an information vacuum, unaware of what other institutions pay for broadband access.[46] While the lack of transparency might be in the best interest of broadband providers, that is typically not the case for educational institutions. This challenge of information asymmetry is likely to be particularly disadvantageous for smaller and rural institutions, who risk overpaying for internet connectivity and passing higher costs to taxpayers.[47] That is why the Commission should consider creating a centralized anonymized database where institutions can view contract terms and pricing information from similar institutions. At the minimum, creating a mechanism for voluntary information sharing between institutions can lead to lower broadband prices for educational institutions and cost savings for U.S. taxpayers.

3. **Promote greater regulatory coordination to prevent duplication of efforts and inefficient use of limited funding**. While the E-Rate program remains important, there is a growing risk of duplication of efforts and inefficient use of limited taxpayer resources, particularly in light of broadband investments under the IIJA and the ARPA.[48] For example, educational institutions may use the E-Rate program to build proprietary fiber networks in certain cases.[49] However, without a formal requirement to coordinate with other state- and federal-funded broadband efforts, these projects risk duplicating infrastructure projects that are already underway or planned.[50]

   Likewise, proposals to expand the E-Rate program to cover Wi-Fi at home and on school buses could improve but risk overlapping through programs like the Affordable Connectivity Program, or local projects under the IIJA and ARPA.[51] Without clear mechanisms for coordination, there is a risk of "double funding," whereby taxpayers

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[44] Lyons, "Reconsidering the E-Rate Program."
[45] The FCC, in the past, has recognized the importance of E-Rate pricing transparency for educational institutions. See Jonathan Chambers, Lisa Hone, and Jon Wilkins, "A Dialogue on E-Rate Pricing Data," Federal Communications Commission (blog), November 16, 2015, https://www.fcc.gov/news-events/blog/2015/11/16/dialogue-e-rate-pricing-data.
[46] See the note above.
[47] While the academic literature on the role of information asymmetry in broadband price increases for rural, smaller educational institutions remains limited, popular publications and available economic data suggest that rural schools tend to pay higher prices for Internet (which is also likely due to the availability of fewer options in rural areas). See, e.g., Tony Wagner, "Rural Schools Pay More Than Double for Slow Internet," *MarketPlace*, November 20, 2015, https://www.marketplace.org/story/2015/11/19/rural-schools-pay-more-double-slow-internet.
[48] Westling, USF Comments, 5.
[49] U.S. Department of Education, "E-Rate Program."
[50] GAO, *Broadband National Strategy*, GAO-22-104611, 1, 13, 27–29.
[51] Federal Communications Commission, Permitting E-Rate Program Support for Off-Premises Use of Wi-Fi Hotspots and Services, FCC-CIRC2407-02 (rel. June 27, 2024), ¶¶ 10, 13, https://docs.fcc.gov/public/attachments/DOC-403540A1.pdf.

inadvertently finance the same service or activity twice.[52] In some cases, weak program controls have also led to documented cases of fraud and waste, according to a 2020 report by the Government Accountability Office.[53]

The FCC should consider establishing formal interagency coordination mechanisms with NTIA, state agencies, and other relevant stakeholders to address these concerns. In addition, a centralized, publicly accessible database that tracks federal and state-funded broadband projects could improve transparency, reduce duplication, and promote efficient use of limited taxpayer resources.

IV. The High-Cost Program

Recommendation: *The FCC should focus its efforts on improving the existing Lifeline Program to address the growing challenge of broadband affordability.*

While private investment and earlier federal subsidies have significantly improved broadband connectivity, particularly in rural areas, affordability now constitutes a primary barrier to meaningful internet access in rural and urban areas.[54] In the long term, promoting robust competition among diverse providers—such as cable, fiber, fixed wireless, and satellite—will be essential to drive down prices and expand consumer choice. [55] In the short to medium term, however, subsidy programs should prioritize consumer-directed assistance, such as the Lifeline Program, which enables eligible individuals to apply subsidies to the broadband or telecommunications provider of their choice. [56]

However, like the high-cost program, Lifeline has faced persistent challenges with fraud and improper disbursements, which risk undermining its legitimacy and diverting resources from households genuinely in need.[57] For example, multiple enforcement actions by the FCC's Enforcement Bureau and Office of Inspector General have documented instances in which companies claimed subsidies for fictitious or ineligible subscribers.[58] While some of these funds have been recovered, in several cases, regulatory action occurred only after external investigations or criminal proceedings brought public attention to the abuses.[59]

To enhance the program's integrity and effectiveness, the FCC could consider transitioning to a voucher-based model, whereby qualifying consumers receive support directly rather than through service providers. This approach, used in several European countries, offers beneficiaries greater flexibility and encourages providers to compete for subscribers. For instance, the United Kingdom's

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[52] GAO, *Broadband: A National Strategy Needed to Coordinate Fragmented, Overlapping Federal Programs*, GAO-23-106818 (May 10, 2023), 1, https://www.gao.gov/products/gao-23-106818.
[53] Pew Charitable Trusts, "Broadband Affordability";" Espín and Rojas, "Bridging the digital divide in the US."
[54] Nabil, "How to Expand Broadband Access."
[55] GAO, *Broadband: National Strategy*, GAO-22-104611, 34.
[56] Kane and Dine, 3–5.
[57] See FCC, Office of Inspector General, *Investigative Summary: Lifeline Program Enrollment Fraud* (2017), https://transition.fcc.gov/oig/FCC_OIG_SAR_09302017.pdf; GAO, *FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program*, GAO-15-335 (Washington, DC: GAO, March 2015), 13, https://www.gao.gov/products/gao-15-335.
[58] GAO, *Efficiency of the Lifeline Program*, GAO-15-335, 13.
[59] FCC, *Total Call Mobile Consent Decree*, DA 16-1399, ¶¶ 5–8.

Gigabit Broadband Voucher Scheme directly supports rural households and businesses with broadband installation costs.[60]

Given that broadband affordability affects Americans across geographic boundaries, the FCC should ensure that limited universal service funds are mostly allocated based on financial need rather than location alone. A modernized, well-targeted Lifeline Program could help bridge the affordability gap and expand digital opportunity to households currently left without Internet access—not because broadband is not available, but because it remains unaffordable for many Americans.

V. The Universal Service Fund Surcharge Mechanism

Recommendation*: In light of the USF Surcharge Fee's regressive nature and questions surrounding its consistency with U.S. constitutional principles, consider asking Congress to replace the current funding mechanism in favor of Congressional appropriations.*

The FCC should request Congress to replace the USF surcharge funding mechanism with a legal framework that provides broadband funding through direct Congressional appropriation.[61] USF programs are funded by a surcharge fee—formally known as the Federal Universal Service Charge (FUSC)—instead of direct Congressional allocations.[62] The Commission imposes this fee on telecommunications companies, but it is generally passed on to consumers as a line item in the broadband bill.[63] Although this surcharge was only 3% in 1998,[64] It has steadily increased to 36.6% as of the second quarter of 2025[65]—even though broadband subscription costs have declined significantly in real terms over the past decade.[66]

The USF surcharge's regressive nature means that consumers pay the same percentage irrespective of their income level, undermining the program's purpose of promoting broadband access for lower-income households.[67]

Congressional appropriation will have three advantages over the USF surcharge funding mechanism.

1. Removing the surcharge will make broadband subscriptions cheaper and more affordable at the point of purchase.

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[60] UK Department for Science, Innovation and Technology, "Gigabit Broadband Voucher Scheme: Information," last updated January 26, 2024, accessed April 11, 2025, https://www.gov.uk/government/publications/gigabit-broadband-voucher-scheme-information.

[61] Daniel Lyons, "A Common-Sense Opportunity to Reform the Universal Service Fund," *AEIdeas* (blog), American Enterprise Institute, January 28, 2021, https://www.aei.org/technology-and-innovation/a-common-sense-opportunity-to-reform-the-universal-service-fund/.

[62] Congressional Research Service, *Overview of the Universal Service Fund and Selected Federal Broadband Programs*, R46780 (Washington, DC: CRS, June 2021), 2, https://sgp.fas.org/crs/misc/R46780.pdf.

[63] Brian Regan, "Ushering Universal Service Reform: Politically Feasible Legislative Principles," *CommLaw Conspectus* 16, no. 2 (2008): 472, https://scholarship.law.edu/commlaw/vol16/iss2/8/.

[64] Lyons, "Opportunity to reform the USF."

[65] Federal Communications Commission, *Proposed Second Quarter 2025 Universal Service Contribution Factor*, DA 25-223 (rel. March 13, 2025), https://docs.fcc.gov/public/attachments/DA-25-223A1.pdf.

[66] For example, according to USTelecom, an industry association whose 2023 report analyzed publicly available pricing data from Internet service providers covering over 90 percent of U.S. residential broadband customers. Inflation-adjusted costs for the most commonly purchased broadband plans in the United States declined by 54.7 percent between 2015 and 2023. See USTelecom, *2023 Broadband Pricing Index* (Washington, DC: USTelecom, October 2023), 2–3, https://ustelecom.org/wp-content/uploads/2023/10/USTelecom-2023-BPI-Report-final.pdf.

[67] Kane and Dine, 4; Yepez, 2.

2. Congressional allocation could help reduce inefficiency and corruption and help Congress hold the FCC accountable for how funds are used. According to the Government Accountability Office, USF programs are plagued by inefficiency and the lack of internal controls, while other sources have also criticized the misuse of funds.[68]

3. Direct Congressional appropriation will allow Congress to limit the amount of USF assistance, encouraging more efficient usage of such funds. To that end, Congress should consider annual reviews of the extent to which different USF programs have effectively met their intended targets. Such review mechanisms can enable evidence-based decision-making about which programs should continue to be funded and how much funding should be allocated. The increased oversight and accountability can help address current challenges like sub-optimal allocation of resources and misuse of funds.[69]

Finally, there are growing constitutional concerns regarding the legal foundation of the Universal Service Fund contribution mechanism. As noted by my NTU colleague Tyler Martinez in an amicus brief submitted to the U.S. Supreme Court in *FCC v. Consumers' Research*, the structure of the USF may give rise to significant questions under Article I of the U.S. Constitution.[70]

As Mr. Martinez observes, the USF surcharge bears many of the hallmarks of a tax—placing financial obligations on consumers—yet it is imposed without clear, express authorization from Congress.[71] This framework implicates constitutional principles grounded in the Taxing and Spending Clause and the nondelegation doctrine, which confer the power to impose taxes exclusively on Congress.[72]

Although the FCC formally retains oversight over the quarterly "contribution factor," the administrative responsibility for calculating this figure is delegated in practice to the Universal Service Administrative Company (USAC), a private, non-profit entity.[73] While the Commission has legal authority to review or modify USAC's recommendations, it frequently allows those recommendations to take effect by default in the absence of timely action.[74] As a result, USAC's proposed surcharge levels often acquire binding legal force without direct decision-making by elected or politically accountable officials.[75]

Mr. Martinez characterizes this arrangement as a form of "double delegation," a term used by some constitutional and administrative law scholars to describe a two-step delegation of regulatory authority: first from Congress to an independent agency, and then from that agency to a private

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[68] Lyons, "Opportunity to reform the USF."
[69] See the note above.
[70] Brief of Amicus Curiae National Taxpayers Union Foundation in Support of Petitioners, *FCC v. Consumers' Research*, No. 23-1242 (U.S. filed July 8, 2024) (Tyler Martinez, counsel of record); U.S. Const. art. I, § 8, cl. 1; U.S. Const. art. I, § 1; see also *Gundy v. United States*, 139 S. Ct. 2116, 2133–34 (2019) (Gorsuch, J., dissenting).
[71] See the note above.
[72] NTUF Amicus Brief, *FCC v. Consumers' Research*, No. 23-1242, at 10–12.
[73] The proposed contribution factor is calculated by the Universal Service Administrative Company each quarter on the basis of projected demand and telecommunications revenues. See 47 C.F.R. § 54.709(a)(3); Universal Service Administrative Company, "Contribution Factor & Quarterly Filings," accessed April 11, 2025, https://www.usac.org/service-providers/making-payments/contribution-factor-quarterly-filings/.
[74] NTUF Amicus Brief, *FCC v. Consumers' Research*, No. 23-1242, at 10–12.
[75] See the note above.

actor.[76] In this instance, delegating revenue-setting authority to a private entity lacking statutory grounding and political accountability raises serious questions about transparency, legitimacy, and consistency with constitutional principles.[77]

Although such concerns may appear abstract, they implicate a foundational feature of the U.S. Constitution: that the power to tax resides solely with Congress, thereby ensuring that fiscal decisions are subject to democratic oversight.[78] A system that collects billions of dollars annually from American consumers—without explicit statutory authorization or congressional appropriation—arguably stretches that framework.[79]

Pending a final ruling by the Supreme Court, there are compelling policy reasons to reconsider the current funding mechanism. Beyond the constitutional issues, the existing surcharge operates as a regressive tax, undermining the very purpose of the USF—to promote equitable access to broadband services, particularly for the economically disadvantaged.

Whatever the Court's ultimate decision, the Commission would be well advised to consider recommending that Congress reform the current funding model. A shift to congressionally appropriated funding would align more closely with constitutional principles and enhance transparency, legislative accountability, and affordability. At a time when affordability, rather than availability, is becoming the primary barrier to digital inclusion, a more transparent and accountable funding mechanism would better serve the Universal Service Fund's original objectives.

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[76] NTUF Amicus Brief, *FCC v. Consumers' Research*, No. 23-1242, at 9; see also Gillian E. Metzger, "Privatization as Delegation," *Columbia Law Review* 103, no. 6 (2003): 1367–80.
[77] NTUF Amicus Brief, FCC v. Consumers' Research, No. 23-1242, at 7–9; see also *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936) ("The delegation is legislative in its character and lays down no rule or standard to guide the regulation..."); *Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. 43, 55–57 (2015) (raising concerns about private entities exercising regulatory power without sufficient oversight or accountability).
[78] See U.S. Const. art. I, § 1; art. I, § 8, cl. 1; NTUF Amicus Brief, *FCC v. Consumers' Research*, No. 23-1242, at 7–9.
[79] See U.S. Const. art. I, § 8, cl. 1; art. I, § 9, cl. 7; NTUF Amicus Brief, *FCC v. Consumers' Research*, No. 23-1242, at 7–9.